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In re Application of :
SCHUTZE, François et al. :
Application No.: 10/531,900 : DECISION ON
PCT No.: PCT/FR03/03122 :
Int. Filing Date: 21 October 2003 : PETITION
Priority Date: 21 October 2002 :
Attorney Docket No.: 032013-120 : UNDER 37 CFR 1.42
For: USE OF TENATOPRAZOLE FOR THE :
TREATMENT OF :
GASTROESOPHAGEAL REFLUX :

This application is before the Office of PCT Legal Administration for matters arising under 35 USC 371. A review of the declaration reveals an indication that joint inventor Alain Taccoen is deceased. Applicants' submission has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 21 October 2003, applicants filed international application PCT/FR03/03122, which claimed a priority date of 21 October 2002. A copy of the international application was transmitted to the Office by the International Bureau on 06 May 2004. The deadline for entry into the national stage in the United States was 21 April 2005.

On 21 April 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 20 October 2005, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the filing fee, search fee, exam fee or oath or declaration were required.

On 17 March 2006, applicants submitted a declaration of the inventors that has been treated as a request for status under 37 CFR 1.42. It included one page 1, one page 2 and two pages 3.

On 23 June 2006, applicants submitted a second copy of the 17 March 2006 declaration, but with 2 pages 1, 2 pages 2 and two pages 3.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42.

The declaration is signed by a legal representative. The declaration must list the inventors and their citizenships and the legal representative and the legal representative's citizenship, residence and postal address. See 37 CFR 1.497. The declaration lists the information for the living inventors, and lists the information for either the deceased inventor or the legal representative, but not both. Applicants state in "Statement Further to Executed Declaration," that the information listed on the declaration is for both the deceased and for his legal representative. A statement by counsel cannot serve to amend the declaration. One block of information is provided, not two. It is either the information for one or the other, but not both. As such, the declaration does not satisfy 37 CFR 1.497(a)-(b) and 37 CFR 1.42.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT. Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: (571)272-3292
Facsimile: (571)273-0459